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# SUPREME COURT OF THE U. STATES.

## No. 92.

JESSE HOYT, PLAINTIFF IN ERROR,

vs.

DAVID HADDEN, JAMES LEFFERTS, AND WILLIAM A. HADDEN.

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IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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*Langtree & O'Sullivan, Print.*—1840.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Judges of the Circuit Court of the United States, for the Southern District of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between David Hadden, James Lefferts, and William A. Hadden, plaintiffs, and Jesse Hoyt, defendant; a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and fully and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, to be held at Washington, in the District of Columbia, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

FRED. J. BETTS,
Clerk of the Circuit Court of the United States, for the Southern District of New York, in the second Circuit.

The answer of the circuit court of the United States for the southern district of New York to the within writ containing the record and proceedings in the within mentioned cause, with the assignments of error and joinder therein, as appears by the schedules hereunto annexed.

Attest: FRED. J. BETTS, Clerk.

By the Honorable Samuel R. Betts, one of the judges of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, to David Hadden, James Lefferts, and William A. Hadden.

Whereas Jesse Hoyt has lately issued out of the Supreme Court of the United States, a writ of error, directed to the judges of the cir-

cuit court of the United States, for the southern district of New York, in the second circuit, stating, that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judge thereof, between David Hadden, James Lefferts, and William A. Hadden, plaintiffs, and Jesse Hoyt, defendant, a manifest error hath happened, to the great damage of the said Jesse Hoyt.

And whereas for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

SAM. R. BETTS.

By the Honorable Samuel R. Betts, one of the Judges of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, to David A. Hadden, James Lefferts, and William A. Hadden.

Whereas Jesse Hoyt has lately issued out of the Supreme Court of the United States, a writ of error, directed to the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, stating, that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judge thereof, between David Hadden, James Lefferts, and William A. Hadden, plaintiffs, and Jesse Hoyt, defendant, a manifest error hath happened, to the great damage of the said Jesse Hoyt.

And whereas for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

SAM. R. BETTS.

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CIRCUIT COURT OF THE UNITED STATES,
*for the Southern District of New York.*

Pleas before the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, at the City Hall of the city of New York, of the term of April, in the year of our Lord one thousand eight hundred and thirty-nine.

Witness Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Be it remembered that on the fifth day of October, in the year eighteen hundred and thirty-nine, before the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, at the city hall of the city of New York, comes Jesse Hoyt, by Benjamin F. Butler, his attorney, and suggest to the said judges, that David Hadden, James Lefferts, and William Alexander Hadden, have commenced a suit against him in the superior court of the city of New York, in the State of New York, for acts done by him under the revenue laws as collector of the district of the city of New York, and prays that the said suit may be docketed in the court as commenced here, and that the clerk be ordered to issue the proper process to remove the said suit, and all the proceedings thereon into this court.

Whereupon, the said judges sent unto the justices of the superior court, a writ, close in these words:

The President of the United States to the Superior Court of the City of New York, greeting:

We, for certain reasons being desirous, that our circuit court of the United States, for the southern district of New York, in the second circuit, should be certified of a certain cause, commenced before you, against Jesse Hoyt, defendant, at the suit of David Hadden, James Lefferts, and William Alexander Hadden, plaintiffs; command you, that the record of proceedings in said cause, you distinctly and openly send to the said circuit court of the United States, for the southern district of New York, in the second circuit, at the city hall, in the city of New York, on the fifteenth day of October instant, as fully and amply as the same are remaining, by whatsoever names the said parties may be called, together with this writ, that our court may cause to be done therewith, what of right ought to be done.

Witness Roger B. Taney, Esq., Chief Justice of the United States, at the city of New York, the fifth day of October, in the year of our Lord one thousand eight hundred and thirty-nine.

FRED. J. BETTS, Clerk.
B. F. BUTLER, Deft's Att'y.

To which the following return was made:

"The answer of the justices of the superior court of the city of New York, to the within writ mentioned.

The record of proceedings whereof mention is within made, with all things touching the same, are hereby respectfully certified to the justices of the circuit court of the United States, for the southern district of New York, in the second circuit within mentioned as within is commanded.

Witness Samuel Jones, Esquire, chief justice of the superior court of the city of New York, at the city hall of the city of New York, the twenty-first day of October in the year of our Lord one thousand eight hundred and thirty-nine.

"New York superior court of September term, to wit, on the ninth day of September in the year of our Lord one thousand eight hundred and thirty-nine.

CITY AND COUNTY OF NEW YORK, *ss:*

David Hadden, James Lefferts, and William Alexander Hadden, plaintiffs in this suit, by Geo. B. Butler, their attorney, come into this court and file with the clerk thereof, at his office in the city hall of the city of New York, their declaration according to the form of the statute in such case made and provided, against Jesse Hoyt, defendant, a resident of the city and county of New York, and complain in a plea of trespass on the case upon promises. For that whereas the said defendant, on the seventh day of September, in the year one thousand eight hundred and thirty-nine, at the city and in the county of New York aforesaid, was indebted to the said plaintiffs in the sum of four thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiffs, to the said defendant, and at the special instance and request of the said defendant, and being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the further sum of four thousand dollars, like lawful as aforesaid for as much money before that time paid, laid out and expended by the said plaintiffs, to and for the use of the said defendant, and at the like special instance and request of the said defendant. And being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and

year last aforesaid, and at the place aforesaid, was indebted to the said plaintiffs in the further sum of four thousand dollars like lawful money as aforesaid, for money before that time had and received by the said defendant to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of four thousand dollars, like lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiffs, the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.,) hath not yet paid the said several sums of money above mentioned or any or either of them, or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs, the said defendant hath hitherto wholly refused and still doth refuse, to the damage of the said plaintiffs, of four thousand dollars, and thereof the said plaintiffs brings suit, &c.

GEO. B. BUTLER,
Plaintiffs Attorney.

And the said Jesse Hoyt, defendant in this suit, by Benjamin F. Butler, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs likewise, &c.

Therefore, to try the issue above joined, and so as aforesaid removed into this said circuit court of the United States, let the marshal thereupon summon a jury to come before the judges of the circuit court of the United States of America, for the southern district of New York, in the second circuit, at the city hall of the city of New York, on the last Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine, twelve of whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid at the same place.

Afterwards, on the 22d day of January, in the year one thousand

eight hundred and forty, at the city hall of the city of New York, before the honorable Samuel R. Betts, one of the judges of the said court, the issue so as aforesaid joined between the said parties, came on to be tried before a jury, for that purpose empannelled, at which day came there as well the said plaintiffs as the said defendant, by their attorneys aforesaid, and the jurors of the jury empannelled as aforesaid, being called, also came, and were then and there duly chosen and sworn to try the said issue; and the counsel learned in the law, for the said plaintiffs in this suit to maintain and prove the said issue, on their part proved that the said plaintiffs had imported into the port of New York, at different times, during the years 1838 and 1839, sundry packages, containing shirts and drawers made of merino wool, upon which the defendant, at the times of the respective importations thereof, had charge and exacted the duty imposed by the act of the 14th July, 1832, "to alter and amend the several acts imposing duties on imports," or ready-made clothing, that is to say, the duty of 50 per centum *ad valorem*, with the statuatory reduction, which duties so charged and exacted were paid by the said plaintiffs under and with a protest in writing at the times of the payments thereof, in which said protest the said plaintiffs alleged that the said goods were only chargeable with the duty imposed by the said act upon "hosiery," being a duty of 25 per centum *ad valorem*, with the statuatory reduction, and the said plaintiffs also proved that the difference between the said rates of duties amounted on the said several importions of goods, to the sum of 2675 dollars and 85 cents, and that the same, with the interest thereon, from the times of the payments thereof, to the day of the said trial, amounted to the sum of 2865 dollars and 23 cents.

Samples of the said shirts and drawers were produced and exhibited on the said trial. It appeared that the shirts after being sewed together had been bound around the neck, and that the opening in the bosoms had received the addition of a piece of cotton cloth sewed in upon each side, on the one of which there was a row of button-holes, and on the other a row of buttons, and that the drawers, as they came from the stocking frame after being sewed together, had received the addition of a waistband with button-holes, buttons and strings, which waistbands were made of cotton cloth. It also appeared that the said shirts and drawers were finished and complete and ready for wearing; and the said plaintiffs, further to maintain the said issue on their part, called the following witnesses, who testified as follows, that is to say:

Robert Lane, who testified that he had been a dry goods merchant in New York from twelve to fifteen years anterior to the year eighteen hundred and thirty-two; that he knew the merchandise in question, of which the samples were produced; that he had dealt in, had purchased it from importers and sold it to country and city dealers; and during all the period, the articles in question had always gone by the name of shirts and drawers. They had undergone no change of name—but they had always been classed, so far as he knew, under

the general denomination of hosiery. They were found in invoices containing these and other kinds of hosiery; had never heard them called ready-made clothing; that the term *ready-made clothing* was known to designate a particular species of merchandize, not including the articles in question; the manufacturers of them would know no more of making ready-made clothing than a watchmaker or any other mechanic; that the articles were clothing and were ready to wear, and so was a stocking.

John Napier testified that in 1832, and previously, he had been acquainted with the merchandize, of which the samples were present; that he had been in this country twenty years in business; and prior to his coming here he had been a clerk in a hosiery store in Scotland; that speaking particularly of the period prior to 1832, he was conversant with the merchandize in question as an importer and a seller; that the articles were of the class of hosiery, and were in 1832, and before, among importers and dealers here, understood as hosiery goods; the class of ready-made clothing did not embrace the articles; the articles are manufactured and sold by hosiers, and are made by the stocking frame. That witness's principals abroad consigning these articles to him, were manufacturers of hosiery; that an order of ready-made clothing would not embrace these articles—but an order for hosiery, these articles would be expected; that these articles usually came in connection with other articles of hosiery, such as stockings, worsted cravats, gloves, and the like; that the name has always been shirts and drawers, or cotton shirts and drawers, according to the material of which they were composed.

And the plaintiffs gave other evidence by several witnesses, importing merchants, dry goods merchants, hosiers, dealers in ready-made clothing, and manufacturers of hosiery; that the merchandize in question was manufactured in the stocking frame, by manufacturers of hosiery; and was in 1832, and long before, known in England by that name, and as belonging to that class of merchandize in England from which it was imported; that it was there kept for sale by hosiers and dealers in hosiery as part of their stock, and was shipped to the United States by that description; and that it was not kept by dealers in ready-made clothing nor made by them in England. They further gave in evidence, that the merchandize in question was known in the city of New York, in 1832, and long before that, it was imported from manufacturers of hosiery, among other articles of hosiery, and was known under the name and description of hosiery by importers from England, where the goods were manufactured, and under that name was known to importing merchants, hosiers, dealers in ready-made clothing, dry goods merchants, and others in the trade, and was not known among merchants by the name or description of ready-made clothing, and was never known to be so called except at the New York custom-house.

That in the judgment of the plaintiffs' witnesses, the articles would not have been furnished in an order for ready-made clothing, but would have been furnished on an order for hosiery, and that

ready-made clothing was understood by merchants and dealers in the same, to embrace garments made out of cloth, by tailors work, and intended to fit the person; that the articles in question were wove each separately, in a stocking frame, to a shape.

On their cross-examination, these witnesses or some of them, testified that the articles in question were always invoiced by the name of "*shirts and drawers*," with the addition of the material, whether woolen, &c., of which they were composed; that prior to 1832, shirts and drawers, made out of cotton or linen cloth were sometimes imported, and always entered as ready-made clothing; that the articles in question were also entered by the importing merchants at the custom-house, in the city of New York, pursuant to instructions given to them by the officers of the customs or custom-house brokers as ready-made clothing; that in invoices of ready-made clothing, cut and made by tailors out of cloth, the particular garment was always described by *name;* that STOCKINGNET, a fabric imported in pieces of about 20 yards each, and sold by the yard or piece, was made by hosiers, from the same materials and in the same way as these articles, but that it had never been known to the trade in New York as hosiery; but, on the contrary, had always been known and entered as cloth, according to the material of which composed; and that in the judgment of several of said witnesses, it was as much hosiery as the shirts and drawers in question, because it was made by hosiers exclusively, and on the stocking frame.

And hereupon, the said plaintiffs rested their cause.

Whereupon, the counsel learned in the law, of the said defendant, to maintain and prove the said issue on his part, called

William O. Bokee, who testified that he resided in the city of New York; was an importing merchant, and had been so for ten or twelve years past. That previously to his engaging in business on his own account, he had been for several years in the employ of a large importing house in the city of New York. That he knew the articles in question well, and had known them for many years. The house with which he lived when a clerk, imported them, and he had imported them himself. They were known to the trade prior to the act of 1832, by the name of "shirts and drawers," with the addition of the material of which they were composed. The articles in question were "woolen shirts and drawers;" he never knew or heard them called by any other name prior to the act of 1832. Prior to that time they were always referred by the trade so far as he knew, to the general denomination of "ready-made clothing." Witness always sold them to the ready-made clothing dealers. The witness further said, that stockinnet was made of the same materials, and was wove on the same principle as those articles on the stocking frame or loom by hosiers, but that stockinnet had never been known to the trade by the name of hosiery.

Martin Habershaw testified that he had been twenty-seven years in the employ of Mr. Abner Weyman, who had kept for the whole of that time a ready-made clothing store. That during all that period,

he, (witness,) had known the articles in question. Mr. Weyman had always kept them as a part of his assortment. They were always called shirts and drawers, and witness never considered them or heard them called hosiery.

Abner Weyman, called by the plaintiff, testified that he had been for many years principal of a ready-made clothing store in Maiden-lane, and that many years prior to eighteen hundred and thirty-two, and that for all that period he had known the articles in question, they were always called hosiery by the importers, and also by purchasers from them, and witness always considered them hosiery; that he had known the articles ever since their introduction into this market, has imported the articles, he thinks, but so long ago, that he is not positive; thinks the articles in question not as much a finished article as if made by cutting from a piece of stockingnet; these articles were always considered in the trade as hosiery, and he never considered them to pay duty as ready-made clothing.

On his cross-examination, this witness said that he was engaged altogether in the ready-made clothing business, and had been so for 25 years, but during all that time had kept the article in question in his store. That he had never had occasion to ascertain by what name they were known at the custom-house, in reference to the tariff and payment of duties; that he would consider drawers or other articles of wearing apparel made of stockingnet as ready-made clothing; that the articles in question were as ready to be worn as any other garment; and that shirts and drawers made of flannel or other cloth, are ready-made clothing.

Jonathan Thompson testified that from December 1820, to May 1829, he was collector of the port of New York, and in that office had occasion to become acquainted with the articles in question. The merchants, while he was collector, always entered them, as far as he knows, as ready-made clothing, under the act of 1816, and paid thereon the duty of 30 per centum ad valorem, imposed by that act. After the act of 1828 took effect, they were entered in the same manner and charged the duty of 50 per centum laid by the last mentioned act on ready-made clothing. There was, as he believes, a Treasury order in force when he came into office, construing the act of 1816, charging the merchandize in dispute as belonging to ready-made clothing, and it was in conformity to that order that he charged on them the ready-made clothing duty. While he was in office, these articles were never entered as hosiery to his knowledge. His instructions from the Treasury Department, and the course of business so far as he knew, were to rate them as ready-made clothing. There was a question as to guernsey frocks, which were imported as they came from the loom. But the Comptroller of the Treasury decided that even these articles were to be rated as ready-made clothing, and witness accordingly charged that duty on them.

The counsel of the said defendant further to maintain and prove the said issue on his part, then offered to prove the following facts.

1st. That under the act of the 27th of April, 1816, " to regulate

the duties on imports and tonnage," (which act imposed a duty of 30 per centum ad valorem) on "clothing ready-made." Shirts and drawers of the description above mentioned, were always treated and held by the Treasury Department as coming within that denomination and rated accordingly, that the collectors of the customs were instructed by the department to charge duties on such shirts and drawers as ready-made clothing; and that in pursuance of such instructions the said duties were charged and collected on such shirts and drawers, in the several ports of the United States.

2nd. That from the time when the act of the 19th of May, 1828, "in alteration of the several acts imposing duties on imports" took effect, shirts and drawers of the description mentioned above, were always treated and held by the Treasury Department, as coming within the demonstration of "ready-made clothing," contained in said last mentioned law, and rated accordingly; that the collectors of the customs were instructed by that department to charge thereon the duty of 50 per centum ad valorem imposed by said last mentioned law on "ready-made clothing;" and that in pursuance of such instructions, the said duty was charged and collected on such shirts and drawers in the several ports of the United States up to the time of the passing of the aforesaid act of the 14th of July, 1832.

3rd. That before the passing of the act of 1828 above mentioned, a question had been made at the custom-house in the port of New York, in regard to "guernsey frocks," an article of wearing apparel, made of wool, and woven in the stocking frame by hosiers, and like the shirts in question, except that they were much coarser and had no additions of any other materials, but were imported as they come from the loom; whether the said "guernsey frocks" were chargeable with duty as ready-made clothing, and that it was decided by the Treasury Department that they were to be rated and charged as ready-made clothing, and were accordingly so rated and charged, pursuant to such direction by the several collectors up to the time of the passing of the aforesaid act of the 14th of July, 1832. Which said evidence the counsel for the said defendant did then and there insist was relevant and material to enable the court to give a proper construction to the aforesaid act of the 14th of July, 1832; that the words "ready-made clothing," used in the said act of the 14th of July, 1832, were to be understood as having been inserted by Congress with full knowledge of the usage and decisions of the Treasury Department, and were to be construed with reference thereto; that the evidence of the facts above enumerated, ought, therefore to be received, and that it would be the duty of the court to instruct the jury thereon, that if the facts above enumerated should be established, they should find a verdict for defendant.

But the counsel of the plaintiffs insisted to the contrary, and that the said facts so offered to be proved, although admissible, did not in judgment of law create such construction of the act of July 14th, 1832, as to render the articles in question liable to the duty on ready-made clothing; if the jury should find, that the well known commer-

cial name or class of the said article at the date of the said act, was hosiery, although it might have been previously charged by the collector of the customs at New York, by order of the officers of the Treasury, as ready-made clothing.

And thereupon, the judge, with the assent of the parties, and in order to present the question of law for review, did then and there declare his opinion, that the said evidence, although admissible as part of the evidence, yet, if the fact were established, did not render articles in question under the act of 1832, chargeable with the duty on ready-made clothing, if the jury should find from the evidence, that the articles were at, and prior to the act of 1832, well known among commercial men, dealers and traders therein, under the name and denomination of hosiery, and refused otherwise to charge the jury in this respect.

To which said decision and opinion of the said judge, the counsel for the said defendant did then and there except.

And inasmuch as the said several matters so offered in evidence on the part of the said defendant, and by his counsel aforesaid insisted on, do not appear by the record aforesaid, the said counsel for the said defendant, did then and there propose his aforesaid exceptions to the opinion of said judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so offered in evidence on the part of the said defendant as aforesaid, according to the form of the statute in such case made and provided; and thereupon, the said judge, at the request of the said counsel for the said defendant, did put his seal to this bill of exceptions, on the eleventh day of February, in the year of our Lord one thousand eight hundred and forty.

SAM. R. BETTS. [L. S.]

CIRCUIT COURT OF THE UNITED STATES,
*Southern District of New York.*

DAVID HADDEN and others
*vs.*
JESSE HOYT.

The trial of this cause having been broken off by the sickness of two of the jurors, and it being desirable, that the opinion of the Supreme Court of the United States should be taken at the present term thereof, on the questions of law which have arisen in this cause, upon the trial so far as it has proceeded; it is agreed, by and between the attorneys of the respective parties, that a bill of exceptions be prepared and signed; and that, thereupon, the defendant, Jesse Hoyt, sue out his writ of error, returnable at the present term of the said Supreme Court, in the same manner as if a verdict had been rendered, and a judgment duly entered thereon, in favor of the above plaintiffs; that an assignment and joinder in error be thereupon filed, and that the cause be submitted on printed briefs. The decision to be con-

clusive upon the questions presented in the said bill of exceptions, and the cause to be brought to trial, subject to that decision, as soon after it shall have been obtained, as such trial can be had.

New York, January 25th, 1840.

B. F. BUTLER, Att'y for Def't.
DAN. LORD, Jr., for Pltff's.

SUPREME COURT OF THE UNITED STATES.

JESSE HOYT, Plaintiff in Error,
*vs.*
DAVID HADDEN, JAMES LEFFERTS, and WILLIAM A. HADDEN, Defendants in Error.
} Assignment of Errors.

Afterwards, to wit, on the thirteenth day of February, in the year one thousand eight hundred and forty, before the judges of the Supreme Court of the United States, at the city of Washington, comes the said plaintiff in error, Jesse Hoyt, by Benjamin F. Butler, his attorney, and says, that in the record and proceedings aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matter therein contained, are not sufficient in law for the said defendants in error to have or maintain their aforesaid action against the said plaintiff in error: there is also error in this, to wit, that by the record aforesaid, it appears that by the judgment aforesaid, in form aforesaid given, was given for the said defendants in error, against the said plaintiff in error; whereas by the law of the land, the said judgment ought to have been given for the said plaintiff in error against the said defendants in error. And the said plaintiff in error prays, that the judgment aforesaid, for the errors aforesaid, and other errors in the records and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

B. F. BUTLER,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

DAVID HADDEN, JAMES LEFFERTS, and WILLIAM A. HADDEN, Defendants in Error,
*vs.*
JESSE HOYT, Plaintiff in Error.
} Joinder in Error.

And hereupon, afterwards, to wit, on the same day and year aforesaid, the said David Hadden, James Lefferts, and William Alexander Hadden, by Daniel Lord, junior, their attorney, freely comes here into court and says, that there is no error in the record and proceedings aforesaid, or in giving the judgment aforesaid, and they pray that the said Supreme Court of the United States now here, may proceed to examine, as well the record and proceedings aforesaid, as the matter aforesaid, above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

DANIEL LORD, Jr., for Deft's in Error.